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NO. 82-338

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

THE SUN PUBLISHING COMPANY, INC.
Petitioner,

versus

JAMES JONES,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JAMES P. STEVENS
Post Office Box 627
Loris, SC 29569
(803) 756-7652
Counsel for Respondent

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STATEMENT OF THE CASE

Respondent, James Jones, commenced this action for libel against Petitioner, The Sun Publishing Company, Inc., to recover for an article published in the Myrtle Beach *Sun News* newspaper which erroneously stated he had pled guilty to violation of federal copyright laws. In February, 1978, a jury returned a verdict in favor of Respondent for $35,000.00 actual damages. (R. 113) By Order dated August 20, 1979, the trial judge granted Petitioner's Motion for judgment *non obstante veredicto*. On March 30, 1982, the Supreme Court of South Carolina reversed the order of the trial judge and reinstated the jury verdict.

The offending article, published January 27, 1976, concerned four Myrtle Beach area men who had pled guilty to charges of violating federal copyright laws in a stereo tape "pirating" scheme. While Respondent Jones was one of five men originally arraigned on the pirating charges, the charges against him were dismissed. The January 27, 1976, Sun News article, however, stated Respondent was fined $1,000.00 by a federal judge following a purported guilty plea.

The Sun News reporter who authored the article in question, John Monk, testified he received the information relative to the guilty pleas in a telephone conversation with the Assistant United States Attorney. (R. 125) The Assistant United States Attorney testified the charges were in fact dismissed against Respondent (R. 84), and that he read to Monk the names of those pleading guilty directly from the file. (R. 76)

The reporter, Monk, also testified that although he was aware of the potential for confusion in the names of those individuals connected with the piracy charges, he never attempted to verify the facts relayed to him by the Assistant United States Attorney, either by looking at the public records himself or contacting any of the individuals involved. (R. 48, 56)

In his Complaint, Respondent asserted the Petitioner published a false and defamatory article which resulted in substantial damage to his reputation. (R. 2) Petitioner admitted the publication of the article but alleged that because the article concerned a matter of public interest, it was priviledged under the United States and South Carolina Constitutions. (R. 5)

REASONS FOR DENIAL OF THE WRIT

THE JUDGMENT OF THE SUPREME COURT OF SOUTH CAROLINA IN THIS LIBEL ACTION CORRECTLY REINSTATED THE JURY VERDICT WHICH WAS BASED ON A FINDING OF FAULT BY THE PETITIONER IN ITS PUBLICATION OF AN ADMITTEDLY ERRONEOUS ARTICLE.

(1)

In *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974), this Court declined to extend the principles spawned in *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964), to private individuals who become embroiled in a public issue. The *Gertz* Court outlined the parameters of state defamation law as follows:

> We hold that so long as they do not impose liability without fault, the States may define for themselves the appropriate standard for a publisher or broadcaster of defamatory falsehood injurious to a private individual. 418 U.S. at 346, 94 S. Ct. at 3010.

Accordingly, since the Respondent Jones was a private individual, it was only incumbent upon him to establish some degree of fault by the publisher in order to warrant a jury verdict in his behalf.

In *Time, Inc. v. Firestone*, 424 U.S. 407, 96 S. Ct. 958 (1976), this Court noted the vigorous standard to be applied to publishers who undertake to print the contents of public records:

> Petitioner (Time, Inc.) may well argue that the meaning of the trial court's decree was unclear, but this does not license it to choose from among several conceivable interpretations the one most damaging to respondent. Having chose to follow this tack, petitioner must be able to establish not merely that the item reported was a conceivable or plausible interpretation of the decree, but that the item was factually correct. 424 U.S. at 459, 96 S. Ct. at 967-68.

Thus, under the principles of *Gertz, supra*, and *Firestone, supra*, the jury could constitutionally have determined that the publisher was at fault for printing the inaccurate article.

(2)

Petitioner's argument that the decision of the South Carolina Supreme Court to re-instate the jury verdict is tantamount to imposition of liability without fault is erroneous. Ample evidence of negligence or fault on the part of the publisher existed to satisfy the standard articulated in *Gertz, supra.*

The Assistant United States Attorney's testimony that he read the names of those individuals pleading guilty directly from the record gives rise to the clear inference that the reporter, Monk, copied down the names erroneously. Moreover, the jury might well have concluded that Monk was negligent in failing to verify the information given him over the telephone, particularly when he knew or should have known the story would have a devastating impact on the reputation of the men pleading guilty. Indeed, Monk testified he was aware of the potential for confusion in the names of the men arraigned yet he proceeded to publish a story which was not "hot news" without further verification. (R. 56-57)

(3)

Respondent respectfully submits that the standard of *Gertz, supra,* was satisfied in this case. The jury apparently concluded that the mistake in the name of one of the individuals allegedly pleading guilty was occasioned by the fault of the publisher. The following language contained in the South Carolina Supreme Court Opinion indicates the court was acutely aware of the standard established by *Gertz, supra:*

> Here, there was no claim or proof that appellant Jones was either a public official or a public figure; hence, under the reasoning of *Gertz v. Robert Welch, Inc.*, 718 U.S. 323, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974), appellant was required only to establish some measure of legal fault by the publisher in order to warrant submission of the matter to the jury.

II

PETITIONER'S ARGUMENT THAT THE JURY VERDICT WAS INVALID BECAUSE OF THE ALLEGED IMPROPER JURY INSTRUCTIONS MUST FAIL BECAUSE PETITIONER

FAILED TO PRESERVE THIS ISSUE BY RAISING IT BEFORE THE SUPREME COURT OF SOUTH CAROLINA, AND NEVER INCLUDED THE TRIAL JUDGE'S INSTRUCTIONS IN THE RECORD FOR REVIEW.

Petitioner's second argument attempts to raise an issue that has not been preserved for review. The trials judge's instructions to the jury were not included in the transcript of record before the Supreme Court of South Carolina; nor was this issue briefed by Petitioner before that Court. The Supreme Court of South Carolina thus never was afforded the opportunity to consider this issue, and Petitioner should be barred from raising it at this late date.

CONCLUSION

It is respectfully submitted that Petitioner's Petition for Writ of Certiorari is without merit; that the Supreme Court of South Carolina properly re-instated a jury verdict that was founded on ample proof of fault; and that the issue of the trial judge's allegedly deficient charge was not raised before the Supreme Court of South Carolina and, therefore, not properly preserved before this Court.

For the reasons hereinabove set forth, Respondent prays that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

JAMES P. STEVENS
Post Office Box 627
Loris, SC 29569
Counsel for Respondent

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

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versus

JAMES JONES, Respondent.

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of September, 1982, three copies of the Brief in Opposition to Petition for Writ of Certiorari were mailed by certified mail, postage prepaid, to William L. Pope, Counsel of Record for Petitioner, addressed to Post Office Box 944, Columbia, South Carolina 29202. I hereby certify that all parties required to be served have been served.

/s/ **JAMES P. STEVENS**
Post Office Box 627
Loris, SC 29569
Counsel for Respondent